IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

CRP.No. 1958 of 2000(E)

(***EP. 108 /1997 IN OS.236/1992 of SUB COURT, SULTHAN BATHERY)***

REVN. PETITIONER/10th RESPONDENT:

K.G. DAMODARAN, S/O. GOPALAN,
KALLUPADI, KEELANVELIL HOUSE,
MUTTIL AMSOM AND DESOM, VYTHIRI TALUK.

BY ADV. SRI.M.RAMESH CHANDER
ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS/PETITIONER AND RESPONDENTS 1 TO 9 & 11 TO 13:
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1. STATE BANK OF TRAVANCORE,
KOTTAPADI BRANCH REP. BY ITS MANAGER.

2. M/S. COLLECTIONS, PARTNERSHIP FIRM,
KALPATTA DESOM AND AMSOM, REP. BY ITS
MANAGING PARTNER E.R. MOHANAN.

3. E.R. MOHANAN, S/O. RAMAKRISHNAN,
GOKULAM ESTATE, VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

4. RAJU VARIKATT, S/O. K.A. THOMAS, VARIKATT HOUSE,
VYTHIRI TALUK, MUTTIL AMSOM DESOM.

5. SHAJAN VARIKATT, S/O. K.A. THOMAS,
VARIKATT HOUSE, VYTHIRI TALUK, MUTTIL AMSOM & DESOM.

6. V.K. PARVATHY, D/O. KESAVAN, GOKULAM ESTATE
VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

7. E.K. RAMAKRISHNAN, S/O. KESAVAN, GOKULAM ESTATE,
VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

8. NARIKUNNIL PATHUMMA, D/O. M. MUHAMMED
RESIDING AT POZHUTHANA HOUSE,
VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

9. MATTAKATH MUHAMMED, S/O. KUNHAYAMMU,
RESIDING AT POZHUTHANA HOUSE,
VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

10. CHORUTHIYIL SAIDALAVI, S/O. MUHAMMED,
AMMARA HOUSE, VYTHIRI TALUK, ACHURANAM AMSOM DESOM.

11. K.G. BALAN, S/O. KEERANVELIL GOPALAN,
KALLUPADI, VYTHIRI TALUK, MUTTIL AMSOM DESOM.

12. KEERANVELIL INDIRA, D/O. ITTIYATHI, KALLUPADI,
VYTHIRI TALUK, MUTTIL AMSOM DESOM.

13. VYTHIRI CO-OPERATIVE AGRICULTURAL DEVELOPMENT BANK LTD.,
NO.W.32, KALPETTA, KALPETTA AMSOM DESOM REP. BY ITS
MANAGER.

BY ADV. SRI.K.K.JOHN
ADV. SRI.P.K.RAMKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 1958 of 2000(E)

ORDER ON C.M.P.NO. 4003 OF 2000 IN C.R.P.NO. 1958 OF 2000

DISMISSED.

03.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 1958 OF 2000

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Dated this the 3rd December, 2007

O R D E R

The Civil Revision Petition is posted in the defect list noticing that service of notice on respondents 15, 17, 19, 20, 21 and 23 to 29 is not complete. Learned counsel for the first respondent, decree holder submitted that the persons to be served are the legal representatives of the deceased respondents 7 and 9. The petitioner challenges the order for sale of his immovable property. For the disposal of the Civil Revision Petition, it is not necessary to serve notice on any of the respondents who are not served. Accordingly, the case is taken up for hearing as agreed by both the counsel.

2. For realisation of the amount as per the decree in O.S.No.236 of 1992 on the file of the court of the Sub Judge, Sulthan Bathery, E.P.No. 108 of 1997 was filed. In the Execution Petition, the decree holder sought for sale of immovable properties belonging to the judgment debtors. The revision petitioner, who is the 10th respondent in the Execution Petition is a subsequent assignee. The executing court issued notice to the respondents in the Execution Petition under Rule 66 of Order XXI of the Code of Civil Procedure. Endorsement on the Execution Petition would indicate that no objections were filed by any of the respondents. On 10.02.2000, the court below passed an order thus:

"Proclamation settled. Upset price Rs. 9 lakhs. For sale, 09.03.2000"

Thereafter, the case was posted on 09.03.2000 and 23.05.2000. On 23.05.2000, an order was passed thus:

> *"Proclamation settled. Upset price 9 lakhs . For sale, 26.06.2000. For report 27.06.2000."*

On 27.06.2000, there was no sitting and the case was posted to 01.07.2000. On 01.07.2000, the court below ordered to proclaim and sale of property on 24.08.2000. The revision petitioner is challenging the order passed by the court below in the Execution Petition ordering sale of the property.

3. The draft sale proclamation , copy of which was made available to me by the learned counsel for the decree holder, would indicate that two items of property were sought to be sold. Item one is having an extent of two acres and item two is having an extent of three acres. In the draft sale proclamation, the value of both items together is shown as Rs.9 lakhs. The draft sale proclamation does not indicate the value of each item of property. It also does not indicate that whether sale of a portion of the property would be sufficient to satisfy the decree debt. The revenue assessed upon the land is not specified in the draft sale proclamation. It is also not specified whether there is any encumbrance. The nature of the improvements in the property is not stated. The court below without any enquiry fixed the upset price at Rs. 9 lakhs.

4. It is well settled that the executing court has to consider the question whether sale of the entire extent of land sought to be sold is necessary for realisation of the decree debt. It is also well settled that the executing court need not undertake the task of fixing of upset price of the property . The second proviso to sub rule (2) of Rule 66 of Order XXI only provides that estimate of the value of the property as suggested

by the decree holder and the judgment debtor alone need be shown in the proclamation. On what materials, the court below fixed the upset price is not clear. There is no judicially considered order fixing the upset price. The court below has not addressed the question as to whether sale of the entire extent of land sought to be sold is necessary for realisation of the decree debt.

5. In **AIR 1990 SUPREME COURT 119 (*Ambati Narasayya vs. M. Subba Rao*)**, the Supreme Court held thus:

> "*"It is of importance to note from this provision that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property , the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion , but an obligation imposed on the Court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.* "

The decision in ***Ambati Narasayya vs. M. Subba Rao*** was followed in several other

decisions of the Supreme Court.

6. Since the order for sale without considering the relevant aspects is illegal, the same is hereby set aside. The court below shall consider the question whether sale of entire extent of land is necessary for realisation of the decree debt. The court below shall also direct the decree holder to incorporate the necessary details in the sale proclamation. The revision petitioner is granted two weeks' time from the date of appearance fixed for appearance of parties, to file counter to Rule 66 of Order XXI notice. The court below shall consider the objections filed by the revision petitioner and pass appropriate orders in accordance with law. If any value is suggested by the revision petitioner, the court below need only show the value as suggested by the decree holder and the value suggested by the revision petitioner in the sale proclamation. If the court thinks it fit to fix an upset price, there must be a considered order for the same .

The Civil Revision Petition is allowed. The order directing sale of immovable property is set aside and the executing court is directed to consider the matter afresh in the manner indicated above. The parties shall appear before the court below on 10.01.2008.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 1958 OF 2000

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Dated this the 3rd December, 2007

O R D E R